

INITIAL STATEMENT OF REASONS
FOR ADOPTION OF RULES UNDER THE
REAL ESTATE APPRAISERS' LICENSING AND CERTIFICATION LAW

As required by Section 11346.2(b) of the Government Code, the Director of the Office of Real Estate Appraisers ("Director") sets forth below an initial statement of reasons for the proposed amendments to Section 3528.

The Real Estate Appraisers' Licensing and Certification Law (Business and Professions Code, Division 4, Part 3, Section 11313) requires the Director of the Office of Real Estate Appraisers to adopt and enforce rules and regulations as are determined reasonably necessary to carry out its purposes. The director proposes amendments to regulations adopted under that authority.

Section 3528. Minimum Requirements

Problem:

Existing regulation in section 3528 requires all applicants for and holders of California real estate appraiser licenses issued under provisions of Title 10, Chapter 6.5, California Code of Regulations, to meet minimum requirements therein or those established by the Appraiser Qualifications Board, whichever are greater.

In 2004, the Appraiser Qualifications Board adopted revised licensing and certification criteria that will become effective on January 1, 2008. The revised criteria include increased appraisal education requirements, and revised experience and examination requirements. States must adopt an approach for implementing the revised criteria and must adopt any statutory and/or regulatory changes necessary to implement the new criteria under the adopted approach.

Under the existing provisions of section 3528, all individuals who file applications on or after January 1, 2008, will be required to meet the revised criteria. However, those individuals who file applications on or before December 31, 2007, will need to file applications complete as to education, experience and examination under the current criteria.

The Office of Real Estate Appraisers proposes an amendment to section 3528 to provide for a modified approach to implementation of the revised criteria to avoid potential burden on prospective applicants.

Specific Purpose and Necessity:

The Office of Real Estate Appraisers (OREA) licenses and regulates real estate appraisers who perform appraisals for federally related real estate transactions. Pursuant to requirements contained in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, PL 101-73, (FIRREA) OREA licenses appraisers in conformance with established licensing criteria. Title XI requires the Appraiser Qualifications Board (AQB) of the Appraisal Foundation to establish the minimum

licensing criteria with which all states must comply. The Appraisal Subcommittee of the Federal Financial Institutions Examination Council enforces minimum licensing criteria established by the AQB.

The Real Estate Appraisers' Licensing and Certification Law (California Business and Professions Code, Division 4, Part 3, sections 11300 *et seq.*) established the Office of Real Estate Appraisers and provided the director with authority to adopt and enforce rules and regulations necessary to carry out the law. Section 11314 requires that OREA's regulations comply in all respects with Title XI, and that requirements for each level of licensure must, at a minimum, meet the criteria established by the Appraiser Qualifications Board. Section 11340(c) requires the director of OREA to adopt regulations that meet the minimum requirements and standards established by the Appraisal Foundation.

Current AQB criteria establish the minimum requirements for education, experience and examination that must be met for state licensure. The AQB has revised the minimum requirements. Those revised requirements take effect on January 1, 2008. The new education requirement increases the minimum number of hours of appraisal education required for licensure, establishes new subject matter to be mastered, and imposes a requirement for additional non-appraisal related education at the certified license levels. The revisions also require applicants for licensure to take and pass a revised national examination that is based on the increased education criteria.

While all state regulatory entities that license and certify appraisers who perform appraisals for federally related real estate transactions must implement the revised requirements by January 1, 2008, the AQB has provided some limited discretion relative to the process for implementation. States may implement the new criteria based on either a "firm date" or "segmented date" approach. The Appraisal Subcommittee requires each state to declare which approach will be implemented.

In states that have adopted the firm date approach, applicants who are issued a license after January 1, 2008, must meet the increased education requirements and must take the new national licensing examination. Individuals who submit applications on or before December 31, 2007, must submit complete applications verifying that they have met the current education requirements, have accumulated the minimum number of hours of appraisal experience specified for the license level for which they have made application, and have passed the current version of the national examination. Applications submitted under the firm date approach must meet all requirements contained in statute and regulation.

The segmented date approach permits applicants who submit applications on or before December 31, 2007, and who have completed one or more of the components (education, experience or examination) under the current criteria but who have not completed all of the requirements, to complete the remaining requirements after January 1, 2008. Under the segmented date approach, the state licensing agency determines when a component is

completed, and then determines whether the applicant conformed to the requirements in effect at the time that component was completed.

Current AQB criteria establish the minimum hours of experience that applicants must obtain before state licensing entities can issue licenses at the certified license levels. Under current AQB criteria, applicants for licenses at the certified residential level must obtain 2,500 hours of experience in no less than 30 months and applicants for the certified general level must obtain 3,000 hours in no less than 30 months. The licensing process in California requires that applicants obtain both the minimum education and experience prior to admittance to the national licensing examination, and that applicants for licenses at the certified residential and certified general levels meet the minimum experience requirement in no less than 30 months.

Upon review of the new licensing criteria, OREA staff determined that, because existing OREA regulations require applicants to meet current AQB criteria for licensure, California would implement the new criteria as a firm date state on January 1, 2008. However, it is clear that if OREA does not adopt the segmented date approach for applications submitted prior to January 1, 2008, prospective applicants currently preparing for licensure, particularly at the certified levels, will be adversely affected.

Under the firm date approach, those persons who do not complete their education and experience requirements, take and pass the licensing examination, and receive their license before January 1, 2008, will be required to meet all of the new licensing requirements in order to obtain a license. Currently, OREA estimates that over 900 persons are proceeding toward licensure but will not complete the education and/or experience requirements in time to file a complete application, take the examination, and obtain licensure prior to January 1, 2008. The result is direct harm to the individuals and to the real estate industry.

Under the firm date approach, individuals who fail to meet all of the requirements for licensure and obtain a license prior to January 1, 2008, must begin the education process again and pay additional costs in order to meet the increased education requirements. They must also take and pass the new licensing examination based on those increased education requirements. Applicants who have completed the required education under the current AQB criteria but who began obtaining the required experience for the certified level licenses after July 1, 2005, cannot meet the minimum 30-month experience requirement in time to file completed applications and receive licenses by December 31, 2007. They would need to return to the education process to complete all of the increased education requirements. The result is a significant direct cost in time and resources to applicants who must obtain the additional education. More importantly, they would be denied licensure until they meet the new requirements.

Individuals who are not able to complete the application process prior to January 1, 2008, will be precluded for obtaining licenses and working in their chosen profession. As a result, the real estate industry may not have a sufficient number of qualified, licensed appraisers to complete appraisals on a timely basis and ensure that real estate transactions

can properly close resulting in harm to the real estate industry and the economy, and to small appraisal businesses.

In addition to the direct harm to individuals and the real estate industry, failure to implement regulations specifying California's implementation approach, will result in the Appraisal Subcommittee assigning the firm date implementation approach to California. The Appraisal Subcommittee has indicated that if a state fails to choose either a firm date or segmented date approach in time to adopt and implement necessary statutory and/or regulatory changes by January 1, 2008, it will measure the state's compliance on January 1, 2008, as if the state had chosen to implement the new criteria on a firm date basis. The Appraisal Subcommittee will apply that policy to a state that chooses the segmented date approach but fails to adopt and implement the necessary statutory and/or regulatory changes to support that approach.

Authority cited: Sections 11313, 11314, and 11340, Business and Professions Code.
Reference : Section 11328 and 11340, Business and Professions Code; and Section 1112, Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73 (FIRREA).

Fiscal Impact Estimates

Fiscal Impact on Public Agencies Including Costs of Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to Any Local Agency or School District for Which Government Code, Section 17561 Requires Reimbursement: None

Local Mandate Statement

Addition of the above-mentioned language does not impose a mandate on local agencies.

Business Impact Statement

The Office of Real Estate Appraisers has determined that addition of the proposed language to Section 3528 would have no adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses

The Office of Real Estate Appraisers finds that the addition of proposed language to Section 3528 will have a positive effect on businesses in the state. Applicants who are in the process of obtaining their appraisal education and who apply for licenses prior to January 1, 2008, will be able to qualify under existing license requirements. Therefore,

they will be able to obtain their licenses in less time and at less cost than if they had to return to the education process to complete the new requirements. In addition, appraisal businesses that are contemplating expanding their business or are in the process of doing so will have a larger pool of licensees from which to hire, and will be better able to provide appraisal services to the real estate industry.

Statement of Potential Cost Impact on Private Persons or Entities

The Office of Real Estate Appraisers finds that the addition of proposed language will not have any cost to private persons or entities.

Statement of Effect on Small Businesses

The Office of Real Estate Appraisers finds that addition of the proposed language will have a positive effect on small businesses because it will ensure that applicants who are in the process of completing their education and experience under the current requirements will be able to qualify for licenses after January 1, 2008, and will be more readily absorbed into small appraisal businesses.

Statement of Alternatives Considered

The Office of Real Estate Appraises identified no viable alternatives to the proposed additional language to Section 3528. No alternative is viable because not adding the proposed language to formalize selection of the segmented approach would preclude over 900 prospective license applicants who are currently obtaining education and experience under existing requirements and who are not able to file complete applications by December 31, 2007, from becoming licensed until they meet the new education requirements.

ALTERNATIVES CONSIDERED

Except for the alternatives considered for the amendments to Section 3622, no reasonable alternatives considered by OREA or that have otherwise been identified and brought to the attention of OREA would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small business.

DETERMINATIONS

The Director has made a final determination that the proposed regulatory action does not have a significant adverse economic impact on business.